

BEFORE THE SURFACE TRANSPORTATION BOARD

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STB DOCKET NO. AB-307 (SUB-NO. 5X)

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WYOMING AND COLORADO RAILROAD COMPANY, INC.  
ABANDONMENT EXEMPTION IN CARBON COUNTY, WYOMING

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PROTEST OF THE STATE OF WYOMING AND CARBON COUNTY, WYOMING TO  
WYOMING AND COLORADO RAILROAD COMPANY, INC.'S  
PETITION FOR ABANDONMENT EXEMPTION

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Respectfully Submitted,

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## **I. PROCEDURAL HISTORY**

On July 23, 2004, the Wyoming and Colorado Railroad Company, Inc. (“WYCO”) filed with the Surface Transportation Board (“STB”) a petition for exemption from the provisions of 49 U.S.C. §10903 to abandon a 23.71-mile line of railroad in Carbon County, Wyoming (“Carbon County Line” or “Line”). On August 12, 2004, the STB published in the Federal Register a notice of WYCO’s petition.

On August 25, 2004, the State of Wyoming, by and through the Office of the Attorney General and on behalf of the citizens of Wyoming and residents of Carbon County, Wyoming, moved the Board for an extension of time in which to file its response and/or protest to the WYCO petition for exemption. By order dated August 27, 2004, the Board granted this extension. Wyoming’s response and/or protest to the WYCO petition are therefore due on or before September 16, 2004.

The State of Wyoming and Carbon County, Wyoming are interested parties in the proposed abandonment. Wyoming, through the state government, fosters and promotes economic development. Carbon County similarly fosters and promotes economic development in Carbon County for the benefit of its residents. The abandonment of a rail line that has historically serviced a sawmill which is scheduled to reopen in just a few weeks will substantially impair economic and community development in Carbon County, Wyoming. Therefore, Wyoming submits the following protest to the proposed abandonment pursuant to 49 C.F.R. §1152.25.

## II. FACTS

### (A) *Undisputed Facts Regarding the Carbon County Rail Line*

As admitted by WYCO, until recently the Carbon County Line served a sawmill located near Saratoga, Wyoming. *WYCO's Petition for Exemption*, p. 4. The sawmill closed in January 2003. It has been less than two (2) years since the line at issue ceased having traffic. Until January 2003, WYCO had entered into contracts with the former operator of the sawmill, Louisiana Pacific ("LP"). The annual "take-or-pay" contracts between WYCO and the former sawmill operator were based upon an average of about 75 cars per month being shipped from the facility. WYCO admits that the "take-or-pay contracts" based on 75 cars per month made the Carbon County rail line profitable. *WYCO's Petition for Exemption*, p. 4.

The sawmill was purchased by Intermountain Resources, LLC ("IMR") on September 26, 2003, just nine (9) months after it closed. *WYCO Petition for Exemption*, p. 4; *IMR Protest to Abandonment*, p. 2; *Declaration of Christopher C. Meyers*, p. 1. IMR anticipates contracting with the United States Forest Service ("FS") for approximately 100 mmbf (million board feet) of timber over the next several years. *Declaration of Christopher C. Meyers*, p. 1. So long as there was adequate rail service to the sawmill, these contracts would result in the sawmill opening on October 15, 2004 with an average of 70 to 80 railcars per month being shipped on the Carbon County Line. Within six (6) months, the average number of cars would increase to between 95 to 120 cars per month. *Declaration of Christopher C. Meyers*, p. 2.

### (B) *Disputed Facts Regarding the Carbon County Rail Line*

In its petition, WYCO claims that IMR informed WYCO that it would use transload facilities located 50 miles away in Rawlins, Wyoming rather than use the Carbon County Line once the sawmill is re-opened. *WYCO's Petition for Exemption*, p. 4. However, Christopher

Meyers of IMR testified in his sworn statement that there are not adequate trucking facilities near the sawmill to allow IMR to utilize the transload facilities in Rawlins, Wyoming. *Declaration of Christopher C. Meyers*, p. 2. As Mr. Meyers testified, without the Carbon County Rail Line at issue, “There is no other practical or economically feasible way to transport [IMR’s] lumber products from Saratoga [Wyoming] to the available markets.” *Id.*

In its petition, WYCO also represents that it “has been unable to reach an arrangement [with IMR] that would enable WYCO to continue operating the [Carbon County Rail] Line on a profitable basis.” *WYCO’s Petition for Exemption*, p. 4. In his sworn statement, Mr. Meyers testified that IMR is prepared to enter into a contract similar to the contract that WYCO had with the prior operator of the sawmill (LP) for the same volume of cars. *Declaration of Christopher C. Meyers*, pp. 2-3. WYCO admitted that the WYCO-LP contract, based on 75 cars per month, permitted WYCO to operate the line on a profitable basis. *WYCO’s Petition for Exemption*, p. 4.

(C) *Undisputed Facts Regarding the Economic Impact to Carbon County*

Carbon County, Wyoming is essentially a rural county with limited industry. According to the U.S. Census Bureau, Carbon County is 7,896 sq. miles in area. There are only about 15,000 people in the entire county. The labor force in Carbon County is only 7,744. *Exhibit A*, U.S. Census Bureau Information. If rail service is maintained, the sawmill located near Saratoga, Wyoming will be a major source of employment and driver for economic development in Carbon County.

According to the Wyoming Business Council, in its first year of operation, the sawmill will provide Carbon County with 70 full-time jobs. Those 70 jobs will produce \$2.94 million in payrolls for Carbon County. In year 2, the sawmill will produce 110 jobs and more than \$4.6 million in payrolls. By year 5, the sawmill will account for 115 jobs and over \$5 million in

payrolls for Carbon County. *Exhibit B, Saratoga Sawmill Project Assessment.* In terms of workers, 115 new jobs in Carbon County means 1.5% of the Carbon County labor force would be employed by the sawmill by 2009.

In addition, the increased direct employment by the sawmill would lead to the creation of new jobs to provide products and services to the sawmill (indirect employment). In the first year of operation, the 70 new jobs created by the sawmill will correlate to about 53 additional jobs in Carbon County. By the third year, that number would be 83 new jobs dependent upon the sawmill. By year 5, 90 jobs, in addition to the 115 jobs directly provided by the sawmill, will be created in Carbon County as a result of the Saratoga sawmill. *Exhibit C, Economic Impact of the Saratoga Sawmill by Type.* In dollars, the sawmill would provide more than \$4.18 million dollars in new payrolls in its first year of operation. By year 3, the sawmill would be responsible (directly and indirectly) for more than \$6.57 million in payrolls with that number ballooning to more than \$7.13 million by the fifth year of operation. *Exhibit C, Impact Summary of Saratoga Sawmill.*

The improvements to the sawmill planned for 2004-2005 will also have a non-recurring impact upon Carbon County. Approximately \$1.17 million dollars in payrolls will be generated in Carbon County during 2004-2005 as a result of construction and improvements at the sawmill. *Exhibit D, Construction Impact of Saratoga Sawmill.*

In addition to the direct economic impact by way of jobs and payrolls in Carbon County, the Saratoga sawmill will have a substantial economic impact on Carbon County's tax base. The improvement and operation of the sawmill facilities will increase Carbon County's tax revenue by \$47,290 in the first year of operation. In the third year of operation, Carbon County expects to receive \$59,697 in additional property taxes from the sawmill. By 2012, Carbon County will

have received over \$518,000 in total tax revenues to fund local development and improve infrastructure to facilitate economic growth in this rural county. *Exhibit E, Revenue Impacts of the Operation of the Saratoga Sawmill.*

Moreover, when adding the increased tax revenues generated by the increased development dependent upon the sawmill (indirect impact), Carbon County can expect to receive more than \$1.25 million in additional tax revenues during the first nine (9) years the sawmill is in operation. *Exhibit E, Revenue Impacts of the Operation of the Saratoga Sawmill.* These tax revenues are vital to promoting economic development in Carbon County.

As demonstrated above, the Saratoga sawmill will be a driver for economic development in Carbon County, if rail service is maintained allowing the sawmill to reopen. The direct and supplier disaggregated impact on Carbon County in the first year of operation will be more than \$21.6 million dollars. By 2012, the sawmill will have a yearly disaggregated impact of more than \$36.8 million dollars on a county of only 15,000 people. *Exhibit F, Direct and Supplier Disaggregated Impact of the Saratoga Sawmill.* By 2012, the total impact on Carbon County will be nearly \$39.3 million dollars per year. *Exhibit F1, Total Disaggregated Impact of the Saratoga Sawmill.*

### **III. APPLICABLE STANDARDS**

Although exemption procedures are generally informal, the STB may direct that additional information be gathered when the impact of the proposed individual exemption cannot be ascertained by the petition and accompanying submissions or significant adverse impacts may occur if the proposed exemption were granted. 49 C.F.R. §1121.4(c).

This is not a class exemption as WYCO has not alleged that no rail traffic has utilized the Carbon County Line for two (2) years. *See* 49 C.F.R. §1152.50(b). Therefore, to utilize the

exemption procedures when abandoning a line, the petitioner must present evidence to demonstrate that regulation is not necessary to carry out the transportation policy of section 10101 [49 U.S.C. §10101.] 49 U.S.C. §10502(a)(1). The STB is required to consider those elements of the rail transportation policy relevant to the statute from which exemption is sought in determining whether an exemption should be granted. *Village of Palestine v. I.C.C.*, 936 F.2d 1335, 1338 (D.C. Cir. 1991).

Since WYCO seeks exemption from procedures for abandonment (49 U.S.C. §10903), WYCO must present evidence sufficient for the STB to find that the future public convenience and necessity require or permit the abandonment or discontinuance of service. 49 U.S.C. §10903(d)(2). See *Burlington Northern Railroad Company- Abandonment Exemption- Klickitat and Goldendale, WA.*, I.C.C. Docket No. AB-6 (Sub No. 335X), 1992 WL 24808, \*2 (January 30, 1992); *Chicago and North Western Transportation Company- Abandonment Exemption- In Cook County, IL.*, I.C.C. Docket No. AB-1 (Sub No. 229X), 1992 WL 147992 (June 3, 1992). The STB must weigh the interests of the public in continued service along the Line against the interests of WYCO in avoiding a financial loss. *Futurex Industries, Inc. v. I.C.C.*, 897 F.2d 866, 869 (7<sup>th</sup> Cir. 1990); *Indiana Sugars, Inc. v. I.C.C.*, 694 F.2d 1098, 1100 (7<sup>th</sup> Cir. 1982); *Colorado v. United States*, 271 U.S. 153, 168-69 (1926).

#### **IV. ANALYSIS**

This is not a case where the shipper (IMR) alleges that abandonment of the line by the owner (WYCO) would be “inconvenient” to the shipper. WYCO has not presented evidence that it has an aged line that cannot be made profitable. Instead, WYCO has presented the STB with a petition to abandon a line that has been, and can remain profitable, in light of the uncontroverted facts, namely that (a) IMR has purchased the Saratoga sawmill, (b) contracts are in place for a

sufficient amount of lumber that will result in an adequate number of rail cars utilizing the line to make the line profitable, and (c) IMR is ready, willing, and able to enter into contracts identical to earlier contracts which WYCO admits made the Carbon County Rail Line profitable.

Additionally, IMR has submitted substantial evidence that alternative transportation options are not available for its products. Like in *Chicago and North Western Transportation Company-Abandonment Exemption-In Cook County, IL.*, WYCO has not presented any evidence that alternative transportation services (i.e. the transload facilities in Rawlins, Wyoming or non-existent trucking facilities) are an economically viable alternative to maintaining the Line at issue. In *Chicago and North Western Transportation Company-Abandonment Exemption-In Cook County, IL.*, the Board denied the exemption petition even though the complaining shippers were in Chicago, Illinois which had some alternative transportation services available. This sawmill is located in Saratoga, Carbon County, Wyoming. There are no reasonable transportation alternatives as evidenced by the sworn declaration of Christopher C. Meyers.

The State of Wyoming submits the attached economic data to show that the impact to the community would substantially outweigh any perceived harm to WYCO. First, it must be noted that even WYCO admits that the Line is not a losing proposition when 75 freight cars per month utilize the Line. Under the facts presented by IMR, 70 to 80 cars per month will traverse the line beginning on October 15, 2004. After that, additional cars will utilize the line making it even more profitable to WYCO. There is no evidence that the maintenance costs associated with the Line will erode the impending profits that WYCO will realize when sawmill traffic resumes in a month.

Second, the economic harm to Carbon County, Wyoming would be substantial. When LP closed the sawmill in Saratoga, Carbon County lost substantial tax revenue. The inability to



reopen the sawmill because of the removal of rail service will negatively impact Carbon County. While \$100,000 of tax revenue may not seem like a lot, it is a substantial loss to Carbon County which has only 15,000 residents and provides services over an area the size of the entire state of Massachusetts.

Additionally, closure of the sawmill due to lack of rail service will cause Carbon County to lose dozens of good-paying jobs in an isolated, rural economy of only 7,800 workers. Although by some standards 205 jobs are not a lot, in a county the size of Carbon County, the loss of the sawmill will have a dramatic impact on local economic development. The sawmill alone will employ about 1.5 percent of the entire Carbon County workforce. The sawmill along with the jobs created as a result of the sawmill reopening will employ nearly 3% of the Carbon County workforce. Not only will Carbon County lose tax revenue necessary to fund infrastructure improvements, the citizens of Carbon County will lose the hundreds of jobs that can make or break future economic development in the county.

In *Chicago and North Western Transportation Company-Abandonment Exemption-In Cook County, IL.*, the STB denied an exemption for abandonment of a marginally profitable rail line because two shippers in Chicago, Illinois complained that alternative transportation was not available and they would be forced to shut down thereby eliminating about 125 jobs in the greater Chicago area. In this case, the Board is presented with evidence that allowing abandonment of a marginally profitable rail line would cost Carbon County 1.5% of *all the jobs in the county*. Like in *Chicago and North Western Transportation Company- Abandonment Exemption- In Cook County, IL.*, the loss to the Carbon County community will be substantially greater than any loss to WYCO. Therefore, the WYCO petition for exemption should be denied.

## **V. CONCLUSION**

The State of Wyoming respectfully requests that the STB deny WYCO's petition for exemption for abandonment of the Carbon County Line. The evidence presented demonstrates that the interests of the public in continued rail service in this area of Wyoming substantially outweigh WYCO's need to close down a profitable line.

In the alternative, Wyoming requests that the STB open this matter for public comment pursuant to 49 C.F.R. §1121.4(c)(1)(ii) and require the filing of additional information by WYCO pursuant to 49 C.F.R. §1121.4(c)(1)(i) regarding the financial condition of the Line and profitability of the Line in light of impending contracts for rail car service that will arise with the opening of the Saratoga sawmill on or about October 15, 2004. In addition, Wyoming requests an oral hearing regarding WYCO's petition for exemption.

Finally, if the STB declines to deny the abandonment and declines to request additional information regarding the proposed abandonment, the State of Wyoming requests that the STB put in place a public use condition pursuant to 49 C.F.R. §1128.28(a)(1) requiring that the Carbon County Line remain available for public use for an additional 180 days following any abandonment. In light of the obvious need for rail service to this area of Carbon County under 49 U.S.C. §10905, the properties composing the Carbon County Line should remain in place for an additional 180 days to allow interested parties the opportunity to evaluate the continued operation of rail service along this corridor.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing Protest of the State of Wyoming and Carbon County, Wyoming, was placed in the U.S. mail and sent via facsimile this \_\_\_\_\_ day of September, 2004, to the following:

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